

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 224, “Telecommunication Services,” Iowa Administrative Code.

The subject matter of paragraph 224.6(2)“b” is sourcing of prepaid wireless services. Item 1 amends paragraph 224.6(2)“b” to clarify the rule and ensure compliance with the Streamlined Sales and Use Tax Agreement. The proposed amendment to paragraph 224.6(2)“b” will not necessitate additional expenditures by the Department of Revenue.

Item 2 proposes the adoption of new rule 701—224.8(34A). The new rule explains the administration of the prepaid wireless service enhanced 911 surcharge and is necessary to implement 2012 Iowa Acts, Senate File 2332.

Item 2 will necessitate additional expenditures by the Department of Revenue. In order to administer the program under the guidelines established in 2012 Iowa Acts, Senate File 2332, the Department must make updates to both its paper and electronic registration, filing, and collection systems and devote staff time to administering the program. The fiscal note on 2012 Iowa Acts, Senate File 2332, estimated these changes will cost \$65,190. Administrative costs are estimated at \$43,500. These estimates do not include the cost of audit, enforcement, or collection activities, which is unknown at this time. The Department is permitted to retain 2 percent of the surcharges collected in order to offset these new administrative expenses.

Item 2 places some additional burdens on sellers of prepaid wireless service, who will be required to collect the enhanced 911 surcharge and remit it to the Department at the same time that they file their sales tax returns. This burden is minimized because the remittance process mirrors the remittance process for state sales tax. Retailers are also compensated for the additional burden; they are allowed to retain 3 percent of the surcharge collected.

Item 3 proposes the adoption of new rule 701—224.9(423). The new rule provides guidance on the sales tax exemption for central office and transmission equipment used by certain telecommunications providers. The new rule is necessary to implement Iowa Code section 423.3(47A), a phased-in exemption that began to take effect in 2006 and took full effect on July 1, 2012.

Item 3 will not necessitate additional expenditures by the Department. The Department has determined that the proposed rule on the exemption for central office and transmission equipment will result in savings that benefit the telecommunications industry.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 8, 2012, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 6, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 6, 2012.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 423.3(47A), 423.20 and 423.15 and 2012 Iowa Acts, Senate File 2332, section 10.

The following amendments are proposed.

ITEM 1. Amend paragraph **224.6(2)“b”** as follows:

b. Prepaid The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. ~~However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.~~ However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1)“e” shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer’s Web site. No items are delivered. The sale would be sourced to the consumer’s Iowa billing address.

EXAMPLE 4: A seller based in California uses a Web site to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller’s Web site. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer’s billing address in Iowa.

EXAMPLE 5: A seller based in California uses a Web site to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller’s Web site. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

ITEM 2. Adopt the following new rule 701—224.8(34A):

701—224.8(34A) Prepaid wireless E911 surcharge.

224.8(1) Definitions. The definitions in 701—224.2(423) apply to this rule. The following definitions are also applicable to this rule.

“*Consumer*” means a person who purchases prepaid wireless telecommunications service in a retail transaction.

“*Department*” means the department of revenue.

“*E911*” means enhanced 911 emergency communications service.

“*Prepaid wireless E911 surcharge*” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

“*Provider*” means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“*Retail transaction*” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless

calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include, but are not limited to, prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“Seller” means a person that sells prepaid wireless telecommunications service to another person.

224.8(2) Registration. Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

224.8(3) Collecting, filing, and remitting.

a. Each seller is responsible for collecting the applicable E911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service located in paragraph 224.6(2) *“b.”* See also 2012 Iowa Acts, Senate File 2332, section 10, and Iowa Code sections 423.20 and 423.15.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless E911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in paragraph 224.8(3) *“a,”* including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete an E911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

g. The seller may deduct and retain 3 percent of prepaid wireless E911 surcharges that are collected by the seller from consumers.

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with ten minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with fifteen minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

224.8(4) *Audit, appeal, and enforcement.*

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless E911 surcharge. See also Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. See also Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of 2012 Iowa Acts, Senate File 2332, section 10.

224.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

224.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless E911 surcharges to the treasurer of state for deposit in the E911 emergency communications fund created under Iowa Code section 34A.7A, subsection 2, within 30 days of receipt of the E911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless E911 surcharges.

This rule is intended to implement 2012 Iowa Acts, Senate File 2332, section 10.

ITEM 3. Adopt the following **new** rule 701—224.9(423):

701—224.9(423) State sales tax exemption for central office equipment and transmission equipment. Effective July 1, 2012, central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by the following providers: local exchange carriers and competitive local exchange service providers as defined in Iowa Code section 476.96; franchised cable television operators, mutual companies, municipal utilities, cooperatives, and companies furnishing communications services that are not subject to rate regulation as provided in Iowa Code chapter 476; long distance companies as defined in Iowa Code section 477.10; or for a commercial mobile radio service as defined in 47 C.F.R. §20.3. The exemption was phased in beginning in 2006 according to the schedule described in subrule 224.9(2).

224.9(1) *Definitions.*

“Central office equipment” means equipment utilized in the initiating, processing, amplifying, switching, or monitoring of telecommunications services including ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function. Central office equipment includes:

1. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

2. Peripheral equipment used to support the transmission of communications over the network such as emergency power equipment, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

3. Circuit equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

4. Radio equipment including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

“Transmission equipment” means equipment utilized in the process of sending information from one location to another location. Transmission equipment includes ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function.

224.9(2) *Schedule for phase-in of exemption.* This exemption was phased-in beginning in 2006 according to the following schedule:

a. If the sale or rental occurs on or after July 1, 2006, through June 30, 2007, one-seventh of the state tax on the sales price shall be refunded.

b. If the sale or rental occurs on or after July 1, 2007, through June 30, 2008, two-sevenths of the state tax on the sales price shall be refunded.

c. If the sale or rental occurs on or after July 1, 2008, through June 30, 2009, three-sevenths of the state tax on the sales price shall be refunded.

d. If the sale or rental occurs on or after July 1, 2009, through June 30, 2010, four-sevenths of the state tax on the sales price shall be refunded.

e. If the sale or rental occurs on or after July 1, 2010, through June 30, 2011, five-sevenths of the state tax on the sales price shall be refunded.

f. If the sale or rental occurs on or after July 1, 2011, through June 30, 2012, six-sevenths of the state tax on the sales price shall be refunded.

g. If the sale or rental occurs on or after July 1, 2012, the sales price is exempt and no payment of tax and subsequent refund are required.

224.9(3) *Refund claims.* For sales or rental occurring on or after July 1, 2006, through June 30, 2012, a refund of the tax paid as provided in subrule 224.9(2) must be applied for, not later than six months after the month in which the sale or rental occurred, in the manner and on the forms provided by the department. Refunds shall only be of the state tax collected. Refunds authorized shall accrue interest at the rate in effect under Iowa Code section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

This rule is intended to implement Iowa Code section 423.3(47A).